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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 3772 of 2005

PETITIONER : Bholaram Verma

VERSUS

RESPONDENTS : The State of Chhattisgarh & Others.

Post for order on 23rd March, 2007

Sd/-
Satish K. Agnihotri
Judge

(51)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION No. 3772 of 2005

PETITIONER : Bholaram Verma, aged about 32 years, S/o Bisanlal Verma, R/o Village Rewagahan, Tahsil and Thana Dongargarh Distt. Rajnandgaon (C.G.)

VERSUS

RESPONDENTS :

1. The State of Chhattisgarh, Through Secretary, Panchayat and Rural Department, D.K.S. Bhawan, Raipur.
2. Sub Divisional Officer, Dongargarh Distt. Rajnandgaon.
3. Gram Panchayat, Through its Sarpanch, Gram Panchayat Rewagahan, Janpad Panchayat Dongargarh Distt. Rajnandgaon.
4. Chief Executive Officer, Janpad Panchayat Dongargarh, Distt. Rajnandgaon.
5. Dalchand Verma, S/o Bhootram Verma, R/ovillage Rewagahan, Tahsil and Thana Dongargarh Distt. Rajnandgaon (C.G.)

Present: Shri Parag Kotecha, Advocate for the petitioner.
Shri Sushil Dubey, Govt. Advocate for the State/respondent No. 1 and 2.
Shri Vivek Verma, Advocate appearing on behalf of Shri Satish Gupta, Advocate for the respondent no. 4.
None appears for respondent no. 3 and 5.

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ORDER

(Passed on 23rd March, 2007)

1. By this petition, the petitioner challenges the resolution dated 16.05.2005 (Annexure P/2) whereunder it was resolved to appoint the respondent no. 5 as Panchayat Karmi in Gram Panchayat Rewaghan, Tehsil Dongargarh, District Rajnandgaon and the order dated 25.06.2005 (Annexure P/4) passed by the Sub Divisional Officer, Dongargarh holding that the Sub Divisional Officer has no jurisdiction to entertain a revision/appeal under provisions of Panchayat (Appeal and Revision) Rules, 1995.

2. The indisputable facts in nutshell are that the petitioner having obtained 49% marks in the 10th examination, made an application alongwith others for appointment on the post of Panchayat Karmi in village Panchayat Rewaghan. On the basis of marks, the name of the petitioner was placed at serial no. 1 and the name of the respondent no. 5 was placed at serial no. 3 as the respondent no. 5 has got 34% marks in the 10th examination certificate. The petitioner and one Pekhanlal obtained equal votes, the respondent no. 5 who was at serial no. 3, was considered for appointment in the resolution dated 19.04.2005 (Annexure P/1) passed by the Gram Panchayat. The said resolution was thereafter approved by the Gram Sabha in its resolution dated 16.05.2005 (Annexure P/2). After approval of the resolution by the Gram Sabha, no

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appointment order was issued. However, the respondent no. 5 was permitted to work as Panchayat Karmi/Secretary.

3. Learned counsel appearing for the petitioner would submit that permitting the respondent no. 5 to work as Panchayat Karmi/Secretary is without any order of appointment pursuant to resolution passed by Gram Panchayat and approved by Gram Sabha. Secondly, the respondent no. 5 has got lesser marks in 10th examination certificate. Thirdly, the relatives of the respondent no. 5, namely brother, uncle are elected Up-Sarpanch and Panch of the Panchayat.

4. Learned counsel appearing for the respondent no. 4 categorically submitted that no person can be permitted to work as Panchayat Karmi without proper order, pursuant to the resolution passed by the Gram Panchayat and Gram Sabha.

5. None appears for the respondent no. 3 and 5 despite service of notice.

6. It is trite that the resolution or a decision in a meeting is not the order which can be given effect to. There should be a proper order pursuant to the resolution for appointment to the post of Panchayat Karmi. The Panchayat & Rural Development Department, Government of Chhattisgarh, vide its circular No. कमांक/पंचा./पंग्राविवि/2006/230 रायपुर दिनांक 16.03.2006 has

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clarified that after resolution of Gram Panchayat and Gram Sabha to appoint Panchayat Karmi, the Sarpanch has to pass an appropriate appointment order for appointment of Panchayat Karmi. It is further stated that in case of removal from the post of Panchayat Karmi also, after resolution of Gram Sabha, the order of removal is to be passed by the Gram Panchayat. Thus, it is clear that no appointment can be given without issuing proper appointment order.

7. In the present case, it appears that the respondent no. 5 has been permitted to work as Panchayat Karmi on the basis of resolution passed by the Gram Panchayat and approved by Gram Sabha. No legal order has been passed appointing him on the post of Panchayat Karmi. With regard to the next contention that the relatives i.e. the brother and the Uncle are elected Up Sarpanch and Sarpanch of the Panchayat is concerned, that also disqualifies the respondent no. 5 for being appointed as Panchayat Karmi.

8. The circular dated 27.05.1996 clearly provides that no person, whose near relative is either government employee or elected or nominated member of the office bearer of the Panchayat Raj Institute or local bodies, would be appointed as Anganwadi Workers/Helpers. The definition of "relative" can be taken from the provisions of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for sort "the Adhiniyam, 1993"). The

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word "relative" used in the Adhiniyam, 1993 is in *Pari-Materia* with the word "relative" used in the circular. "The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject" (Principles of Statutory Interpretation by Shri Guru Prasanna Singh, Tenth Edition, 2006, page 278). "Relative" has been defined in Section 69 of the Adhiniyam, 1993, which reads as under:-

> "69. [2][Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat.
>
> Explanation.-for the purpose of this sub-section the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, brother-in-law, sister-in-law, daughter-in-law.]"

9. The Sub Divisional Officer has rightly rejected the appeal/revision on the ground that since no order has been passed appointing the respondent no. 5 as Panchayat Karmi, the appeal is not maintainable before the Sub Divisional Officer.

10. As a result and for the reasons stated hereinabove, this petition is allowed and the decision to take work of Panchayat Karmi from

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respondent no. 5 without appropriate appointment order is bad and quashed. No order to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit